IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

Smt.Tija Devi Vs. Girdhari Singh & ors.

S.B.CIVIL WRIT PETITION NO.4125/2005

Date of order : 18.04.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.S.G.Ojha for the petitioner

Mr.O.P.Singhvi) for the respondents
Mr.V.K.Mathur)
Mr.B.L.Maheshwari)

BY THE COURT:

The petitioner, claimant in MAC Case No.104/1999 before the Motor Accidents Claims Tribunal, Ratangarh has submitted this writ petition against the order passed by the Tribunal on 01.06.2005 closing her right to lead evidence.

It appears from the order-sheets placed on record that the claim application was originally submitted by Lichhma, daughter-in-law of the petitioner, claiming compensation on account of death of her husband Bhanwarlal (son of the petitioner) in a vehicular accident. It further appears that the said claimant Lichhma, also expired issueless on 16.01.2003.

The petitioner has thereafter been transposed as claimant by the order dated 25.02.2004.

The learned Tribunal found on 01.06.2005 that the case was pending since the year 1999 and issues were framed on 29.05.2002 and despite extending several opportunities and despite granting last chance on 16.02.2005, the claimant still failed to adduce evidence and, therefore, evidence was required to be closed.

Assailing the order dated 01.06.2005, learned counsel for the petitioner has strenuously contended that a look at the order-sheets of the case makes it apparent that on substantial number of occasions, the matter has been adjourned for no fault of the petitioner; that even after granting of the last opportunity on 16.02.2005, next two dates were adjourned for the Lawyers not attending to work and in the overall circumstances of the case, the Tribunal was not justified in closing the evidence of the petitioner on 01.06.2005 without considering the plight of the petitioner who is a poor illiterate lady and has lost her son in vehicular accident and even her daughter-in-law has also expired. Learned counsel for the respondents have supported the order impugned with the submissions that the Tribunal has shown utmost leniency to

the petitioner and granted several adjournments for leading evidence and the Tribunal was perfectly justified in closing the evidence on the petitioner's failure to lead evidence despite last opportunity.

Having heard learned counsel for the parties and having examined the material placed on record, this Court is clearly of opinion that the order impugned cannot be sustained.

A comprehension of the order-sheets makes it clear that in this claim case filed in the year 1999 issues were framed only on 29.05.2002 and thereafter most of the times the case had been adjourned either for the Presiding Officer being not available or for the learned counsel for the parties not attending to work. After framing of the issues on 29.05.2002, the case had been adjourned on 28.08.2002 on account of the lawyers abstaining from work because of condolence; on the next date of 30.10.2002, the case had been adjourned for the lawyers striking work; on 22.01.2003 the case had been adjourned for the Presiding Officer being on leave; on 26.02.2003 again the case had been adjourned for the lawyers not attending because of condolence.

On the next date of 30.04.2003 again the case had been adjourned for the lawyers not attending because of condolence but the Tribunal had noticed the application having been moved on 10.04.2003 informing about death of Lichhma on 16.01.2003 and for transposition of the present petitioner as the claimant. The said application had been decided only on 25.02.2004 after another round of adjournments, wherein for at least three occasions, the Presiding Officer was not available and on one occasion, the lawyers did not attend because of condolence. After transposition of the petitioner as claimant, the first date for filing of amended claim was fixed on 10.03.2004 and then the case was posted for evidence on 21.07.2004.

On 21.07.2004 again the case was adjourned for the Presiding Officer being not available and of course two adjournments were sought on behalf of the petitioner for evidence on 22.09.2004 and 29.09.2004 but again, on next two dates of 03.11.2004 and 19.01.2005 case had been adjourned for the Presiding Officer being not available.

On 16.02.2005 the petitioner was granted last opportunity to lead evidence on 16.03.2005; but the next two order-sheets of 16.03.2005 and 27.04.2005 record simple

adjournment for the lawyers abstaining from work (in these order-sheets even the reason for such abstention is not mentioned). The order-sheets dated 16.03.2005 and 27.04.2005 read as under: -

> "16.3.05
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> वकीलगण ने आज कार्य स्थगन कर रखा है। गवाह हाजिर नहीं हैं। वास्ते साक्ष्य सायल दि० 27.4.05 को पेश हो।"

> "27.4.05
>
> वकीलगण ने आज कार्य स्थगन कर रखा है। वास्ते साक्ष्य सायल दि० 1.6.05 को पेश हो।"

On the next date thereafter, the evidence has been closed by the impugned order. This Court is unable to countenance the approach of the Tribunal in proceeding to close down the evidence of the petitioner on the objections of the non-applicants with reference to the fact that the case was pending since the year 1999 and that the issues were framed on 29.05.2002. The learned Judge of the Tribunal has not even referred to the fact of the present petitioner having been substituted as claimant only on 25.02.2004 and then the significant fact that leisurely the matter has been adjourned for the learned lawyers not attending the work on substantial number of dates and so also the learned Presiding Officer

being not available on yet other substantial number of dates. In contrast to the leisure adjournments remains the plight of a claimant who is alleged to have lost her son in vehicular accident and her deceased son's wife has also expired issueless. Closure of the evidence by the order dated 01.06.2005 on the so-called objections of the non-applicants is shocking. Learned Judge has even ignored the fact that after granting of last opportunity on 16.02.2005, on next two consecutive dates, the lawyers did not attend the proceedings; and obviously, in the face of order sheets of this case, it cannot be said that if the petitioner would have attended the proceedings on those dates, her statement was likely to be recorded. In the overall circumstances of the case, though the petitioner has not adduced evidence on 01.06.2005, however an opportunity could have been extended to her to do so without causing any prejudice to the other side.

It is to be imbibed that rules of procedure are intended to subserve the cause of justice and in the trial the procedure is adopted by the court/tribunal concerned so as to advance the cause of justice providing fair opportunity of presenting their case to all the parties. The court/tribunal has inherent power to do real and substantial justice for which it exists and

it is always preferred to decide an issue on merits instead of driving out a party on mere technicalities.

The approach of the learned Judge of the Motor Accidents Claims Tribunal in the present case in closing down the evidence of the petitioner remains detached from the realities and could only be termed as perfunctory an approach; and cannot be appreciated. The impugned order cannot be sustained.

As a result of the aforesaid, this writ petition succeeds and is allowed. The impugned order dated 01.06.2005 is quashed and set aside and the Tribunal is directed to afford reasonable opportunity to the petitioner to lead her evidence. No costs.

(DINESH MAHESHWARI),J.

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